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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,853	04/16/2004	Chiranjit Acharya	80398.P570	8193
8791 7590 03/08/2007 BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			EXAMINER FREJD, RUSSELL WARREN	
			ART UNIT 2128	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/08/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/825,853	Applicant(s) ACHARYA, CHIRANJIT	
	Examiner Russell Frejd	Art Unit 2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-10,13-17,20-24,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-10,13-17,20-24,27,28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

In re Application of: Acharya

Examination of Application #10/825,853

1. This communication is in response to the amendment received 19-December-2006. Claims 1-3, 6-10, 13-17, 20-24, 27, and 28 are pending in the application. Claims 4, 5, 11, 12, 18, 19, 25 and 26 were canceled by the amendment.

Claim Rejections under 35 U.S.C. § 101

2. 35 U.S.C. 101 reads as follows:
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.
- 2.1 Claims 1-3, 6-10, 13-17, 20-24, 27, and 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The invention claims a method for constructing and selecting a finite mixture model.
- 2.2 This claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful, concrete and tangible result.

Specifically, the claimed subject matter does not produce a tangible result because the claimed subject matter fails to produce a result that is limited to having real world value rather than a result that may be interpreted to be abstract in nature as, for example, a thought, a computation, or manipulated data. More specifically, the claimed subject matter provides a method for generating a quantized stream of data by applying the FMM to a data Stream if the FMM selected from the set of FMMs defines a vector quantized codebook. This produced result remains in the abstract and, thus, fails to achieve the required status of having

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real world value, because the claims are determined to convert one set of numbers into another set of numbers, whereby the method does not manipulate appropriate subject matter, and thus cannot constitute a statutory process (MPEP Section 2106.02).

2.3 The Examiner also posits that the claims of the present invention are computer executable software code, or a program per se, consisting of a machine-readable medium (claims 8-10, 13 and 14) having software instructions that implement the method for selecting a FMM based on corresponding MDL values, as well as the system of claims 15-7, 20 and 21, and the apparatus of claims 22-24, 27 and 28. For at least this reason, the software instructions of the present invention do not meet the criteria for a statutory process (MPEP Section 2106.01).

****>**Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” In this context, “functional descriptive material” consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of “data structure” is “a physical or logical relationship among data elements, designed to support specific data manipulation functions.” The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) “Nonfunctional descriptive material” includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

2.4 In view of the aforementioned requirement, the Examiner respectfully contends that the claim language of claims 8-10, 13 and 14, do not claim a practical application, that language claiming a machine-readable medium having software for selecting a FMM based on corresponding MDL values. The medium holding instructions is determined to recite data embodied on a computer-readable medium. However, the data does not impart functionality to either the data as claimed or to the computer. As such, the claimed invention recites non-functional descriptive material, *i.e.*, mere data. Non-functional descriptive material is merely

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carried on the medium, it is not structurally and functionally interrelated to the medium, and thereby does not manipulate, or execute, appropriate subject matter, and thus cannot constitute a statutory process.

Allowed Claims

3. Claims 1-3, 6-10, 13-17, 20-24, 27, and 28 are deemed allowable over the prior art of record at this time, pending resolution of any rejections noted above. The prior art does not specifically disclose selecting a FMM based on corresponding MDL values which generates a quantized stream of data by applying the FMM to a data stream if the FMM selected from the set of FMMs defines a vector quantized codebook.

Response Guidelines

4. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

4.1 Any response to the Examiner in regard to this non-final action should be

directed to: Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, **or** the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

mailed to: Commissioner of Patents and Trademarks
P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to: (571) 273-8300

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Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

Date: 4-March-2007


RUSSELL FREJD
PRIMARY EXAMINER